Supreme Court, U.S.
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No. 00-801

In The

Supreme Court of the United States

STEVEN SIMON,

Petitioner,

vs.

VALUE BEHAVIORAL HEALTH, INC., ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth District

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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CORPORATE DISCLOSURE STATEMENT

MetLife, Inc., is the parent company of Metropolitan Life Insurance Company. As of September 30, 2000, publically held companies of which MetLife, Inc., directly or indirectly has actual ownership (for its Own Account) of 10% *through 99% of the total outstanding voting stock or control* are as follows:

Dan River, Inc. (GA)

Nvest, L.P. (DE)

Reinsurance Group of America, Incorporated (MO)

Companies of which MetLife, Inc. directly or indirectly has actual ownership (for its Own Account) of 10% through 99% of the *total outstanding voting stock*[1] are as follows:

AEW Advisors, Inc. (48.13%) (MA)
AEW Capital Management, Inc. (48.13%) (MA)
AEW Capital Management, L.P. (48.13%) (DE)
AEW Curzon Limited (48.13%) (England)
AEW Hotel Investment Corporation (48.13%) (MA)
AEW Hotel Investment Limited Partnership (48.13%) (MA)
AEW II Corporation (48.13%) (MA)
AEW Investment Group, Inc. (48.13%) (MA)
AEW Management and Advisors, L.P. (48.13%) (DE)

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[1] Does not include real estate joint ventures and partnerships of which MetLife, Inc. and/or its subsidiaries is an investment partner.

CORPORATE DISCLOSURE STATEMENT
– Continued

AEW Partners III, Inc. (48.13%) (DE)
AEW Partners IV, Inc. (48.13%)
AEW Real Estate Advisors, Inc. (48.13%) (MA)
AEW Real Estate Advisors, Limited Partnership (48.13%) (MA)
AEW Securities, L.P. (48.13%) (MA)
AEW TSF, Inc. (48.13%) (DE)
AEWPN, LLC (48.13%) (DE)
American Horizon General Agency, Inc. (57.2%) (FL)
American Horizon Holdings, Inc. (57.2%) (DE)
American Horizon Insurance Company (57.2%) (AZ)
American Horizon Property & Casualty Insurance Company (57.2%) (IL)
American Horizon Services, Inc. (57.2%) (DE)
Aurora Limited Partnership (0.005%) (IL)
Back Bay Advisors, Inc. (48.13%) (MA)
Back Bay Advisors, L.P. (48.13%) (DE)
BCOP Associates L.P. (0.46%) (MA)
Benefit Resource Life Insurance Company (Bermuda) Ltd. (48.13%) (Bermuda)
Copley Properties Company, Inc. (48.13%) (MA)
Copley Properties Company II, Inc. (48.13%) (MA)
Copley Properties Company III, Inc. (48.13%) (MA)
Copley Public Partnership Holding, L.P. (48.13%) (DE)
Crea Investors/Santa Fe Springs, Inc. (48.13%) (MA)
Dan River, Inc. (32%) (GA)
Eclipse Claim Services, Inc. (25%) (Canada)
Eighth Copley Corp. (48.13%) (MA)

CORPORATE DISCLOSURE STATEMENT
– Continued

Fairfield Management Group, Inc. (48.13%) (MO)
Fifth Copley Corp. (48.13%) (MA)
Fifth Singleton Corp. (48.13%) (MA)
Fourth Copley Corp. (48.13%) (MA)
Fourth Income Corp. (48.13%) (MA)
Fourth Singleton Corp. (48.13%) (MA)
Grand Cathay Securities Investment Trust Co., LTD (20%) (Taiwan)
General American Argentina Seguros De Vida, S.A. (57.9%) (Argentina)
Genesis Seguros Generales, Sociedad Anonima De Seguros Y Reaseguros (50%) (Spain)
Great Rivers Reinsurance Management, Inc. (48.13%) (MO)
Harris Associates, Inc. (48.13%) (DE)
Harris Associates, L.P. (48.13%) (DE)
Harris Associates Securities, L.P. (48.13%) (DE)
Harris Partners, Inc. (48.13%) (DE)
Harris Partners L.L.C. (48.13%) (DE)
Jurika & Voyles, Inc. (48.13%) (DE)
Jurika & Voyles, L.P. (48.13%) (DE)
Kobrick Funds LLC (48.13%) (DE)
Loomis, Sayles & Company, Inc. (48.13%) (MA)
Loomis, Sayles & Company, L.P. (48.13%) (DE)
Loomis, Sayles Distributors, Inc. (48.13%) (MA)
Loomis, Sayles Distributors, L.P. (48.13%) (DE)
Loomis, Sayles (Euro) Limited (48.13%) (United Kingdom)
Loomis Sayles (Australia) Holdings, LLC (Australia)
Loomis Sayles (Australia) Pty Limited (Australia)
Malaysia Life Reinsurance Group Berhad (17.37%) (Malaysia)

CORPORATE DISCLOSURE STATEMENT
– Continued

MC Management, Inc. (48.13%) (MA)
MC Management, L.P. (48.13%) (DE)
Mercadian Capital L.P. (95%) (DE)
Mercadian Funding L.P. (95%) (DE)
Metric Colorado, Inc. (80%) (CO)
Metropolitan Lloyds Insurance Company of Texas[2] (TX)
Metropolitan Structures (50%) (IL)
NEF Corporation (48.13%) (MA)
New England Funds, L.P. (48.13%) (DE)
New England Funds Management, L.P. (48.13%) (DE)
Nvest, L.P. (7.29%) (DE)
Nvest Associates, Inc. (48.13%) (DE)
Nvest Companies, L.P. (48.13%) (DE)
Nvest Holdings, Inc. (48.13%) (MA)
Nvest Partnerships, LLC (48.13%) (DE)
Persues Partners L.P. (0.005%) (DE)
Pleiades Partners L.P. (0.005%) (DE)
P.T. MetLife Sejahters (62%) (Indonesia)
R&T Asset Management, Inc. (48.13%) (MA)
Regal Atlantic Company (Bermuda) Ltd. (57.9%) (Bermuda)
Reich & Tang Asset Management, L.P. (48.13%) (DE)
Reich & Tang Distributors, Inc. (48.13%) (DE)
Reich & Tang Services, Inc. (48.13%) (DE)
Reinsurance Company of Missouri, Incorporated (57.9%) (MO)
Reinsurance Group of America, Incorporated (57.9%) (MO)
Reinsurance Partners, Inc. (57.9%) (MO)

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[2] Affilate

CORPORATE DISCLOSURE STATEMENT
– Continued

RGA Americas Reinsurance Company, Ltd. (57.9%) (Barbados)
RGA Argentina, S.A. (57.9%) (Argentina)
RGA Australian Holdings Pty Limited (57.9%) (Australia)
RGA Canada Management Company, Ltd. (57.9%) (Canada)
RGA Capital Limited (57.9%) (United Kingdom)
RGA Financial Group, L.L.C. (35.04%) (DE)
RGA Financial Products Limited (57.9%) (Canada)
RGA Life Reinsurance Company of Canada (57.9%) (Canada)
RGA Managing Agency Limited (57.9%) (United Kingdom)
RGA Reinsurance Company (57.9%) (MO)
RGA Reinsurance Company (Barbados) Ltd. (57.9%) (Barbados)
RGA Reinsurance Company of Australia Limited (57.9%) (Australia)
RGA Reinsurance Company of South Africa Limited (57.9%) (South Africa)
RGA Reinsurance (UK) Limited (57.9%) (United Kingdom)
RGA South African Holdings (Pty) Ltd. (57.9%) (South Africa)
RGA (U.K.) Underwriting Agency Limited (57.9%) (United Kingdom)
Santander Met, S.A. (50%) (Spain)
Second Income Corp. (48.13%) (MA)
Seguros Genesis, S.A. (Spain) (50%) (Spain)
Seventh Copley Corp. (48.13%) (MA)
Sixth Copley Corp. (48.13%) (MA)
Sixth Singleton Corp. (48.13%) (MA)
Snyder Capital Management, Inc. (48.13%) (DE)

CORPORATE DISCLOSURE STATEMENT
– Continued

Snyder Capital Management, L.P. (48.13%) (DE)
SPA Partners L.P. (0.005%) (DE)
St. James Fleet Investments Two Limited (34%) (Cayman Islands)
State Street Research Strategic Portfolios: Aggressive[3] (63.9%) (MA)
State Street Research Strategic Income Plus (71.9%) (MA)
State Street Research Intelliquant Portfolios: Small Cap Value (99.2%) (MA)
Stellar Partners L.P. (0.005%) (DE)
Texas American Horizon Services Agency, Inc. (57.2%) (TX)
Third Income Corporation (48.13%) (MA)
Third Singleton Corporation (48.13%) (MA)
Triad Re, Ltd. (32.36%) (Barbados)
Vaughan, Nelson, Scarborough & McCullough (48.13%) (DE)
Vaughan, Nelson, Scarborough & McCullough, L.P. (48.13%) (DE)
VNSM Trust Company (48.13%) (TX)
Westpeak Investment Advisors, Inc. (48.13%) (MA)
Westpeak Investment Advisors, L.P. (48.13%) (DE)
Westpeak Investment Advisors Australia Limited Pty. (48.13%) (Australia)

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[3] Mutual Fund

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OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents METROPOLITAN LIFE INSURANCE COMPANY (hereinafter "MetLife") and JACK WICKWARE, ESQ., respectfully request that this Court deny the Petition for Writ of Certiorari seeking review of the Ninth Circuit's opinion in this case. That opinion is reported at 208 F.3d 1073 (9th Cir. 2000).

STATEMENT OF FACTS

In the action below, Petitioner STEVEN SIMON (hereinafter "Simon") sought to assert claims for ERISA[4] plan benefits under the guise of antitrust and RICO[5] conspiracy claims.

Simon was an officer of several mental health care organizations, Humanistic Mental Foundation, Seeds of Life, Inc., a California Corporation, HolistiCare, a California Corporation and Sunstar Healthcare, a California Corporation.

Simon filed his original complaint on June 27, 1996. Simon did not serve any of the defendants with that complaint.

On October 24, 1996, Simon filed his first amended complaint ("FAC"). In the FAC, Simon attempted to

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[4] The Retirement Income Security Act of 1974 as amended [29 U.S.C. § 1001, *et seq.*] ("ERISA").

[5] The Racketeering Influenced And Corrupt Organizations Act [18 U.S.C. § 1961, *et seq.*] ("RICO").

allege the following claims: (1) violations of the Sherman Anti-Trust Act; (2) violations of the Clayton Anti-Trust Act; (3) recovery of plan benefits under ERISA; (4) recovery of plan benefits under FEHBA [the Federal Employee Health Benefit Act, 5 U.S.C. § 8901, *et seq.*]; (5) violations of RICO; (6) tortious interference with contractual relations; and (7) tortious interference with prospective economic relations.

MetLife is informed and believes that Simon served his FAC on well over 100 defendants. Simon also filed various motions and ex parte applications to extend the time for him to serve his FAC on unserved defendants. Such motions and applications were denied by the District Court.

In response to Simon's FAC, many of the served defendants filed and joined in numerous motions to dismiss, motions to quash, motions for more definite statements, and motions to strike. All of the defendants' motions attacking Simon's FAC were granted in whole or in part. Although the District Court made many specific rulings on defendants' various motions, the end result was that Simon's FAC was dismissed on February 27, 1997 and he was granted leave to file his second amended complaint ("SAC") on or before May 1, 1997.

Simon subsequently filed ex parte applications and motions for clarification, amendment, and reconsideration of the District Court's Orders concerning defendants' motions. All of Simon's applications and motions were denied by the District Court.

On May 1, 1997, Simon filed his SAC. Simon's SAC purports to allege the following claims: (1) violations of

the Sherman Anti-Trust Act; (2) violations of the Clayton Anti-Trust Act; (3) violations of RICO; and (4) recovery of plan benefits under FEHBA.

On May 9, 1997 Simon filed a motion to amend his SAC which was opposed by numerous defendants. The District Court granted Simon's motion in part and denied it in part.

Following its receipt of Simon's SAC, the District Court scheduled a status conference with Simon for July 7, 1997 to discuss the obvious deficiencies in his pleading and the nature of Simon's claims as well as the practicality and logistics of the action. Following the status conference and after addressing specific concerns with Simon, the District Court, among other things, dismissed without prejudice all of the defendants from the action except the first named defendant, Value Behavioral Health, Inc., and ordered Simon to file his Third Amended Complaint ("TAC") within 30 days stating clearly any claims he may have against that single defendant.

Simon subsequently filed his TAC against defendant Value Behavioral Health. Defendant Value Bahavioral Health filed a motion to dismiss Simon's TAC. Simon also filed a motion to stay the proceedings and a motion to amend the TAC and join additional parties. On March 2, 1998, the District Court denied Simon's motion to stay the proceedings and motion to amend the complaint and join additional parties, and granted defendant Value Behavioral Health's motion to dismiss the TAC with prejudice.

On April 30, 1998, Simon filed his Notice of Appeals with the Court of Appeals for the Ninth Circuit. Simon's

appeal addressed, among other things, all of the rulings and orders referenced above.

On June 7, 2000, the Court of Appeals for the Ninth Circuit affirmed the District Court's decision. The Ninth Circuit's decision specified that under ERISA, federal anti-trust law and RICO, Simon as the assignee of health care providers, who are themselves assignees of patient's benefits claims, lacks standing to sue insurers and related entities to recover on those claims. Moreover, Simon lacked standing because he was neither a plan participant nor a beneficiary of a health benefit plan within the meaning of ERISA, and was ineligible for derivative standing as a health care provider.

Simon has petitioned this Court for a writ of certiorari which was placed on the Court's docket on November 20, 2000.

REASONS WHY THE PETITION SHOULD BE DENIED

1. Neither the Decision Below nor the Record Raises Considerations of Fact and Law Sufficient to Establish Grounds for Granting Certiorari.

"Review on a writ of certiorari is not a matter of right, but of judicial discretion."[6]

Rules of the Supreme Court, Rule 10, unambiguously provides that "[a] petition for a writ of certiorari will be granted only for compelling reasons."[7] Thus, the petition

[6] Sup. Ct. R. 10 (2000).

[7] *Id.*

should present questions involving principles of great public importance[8] or those that require resolution of conflicts of authority.[9] Where the purported error asserted by a petition consists simply of erroneous factual findings or the misapplication of a properly stated rule of law,[10] review is not warranted.

This petition presents no basis for review of certiorari. Petitioner simply levels undifferentiated claims

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[8] See *Nat'l Labor Relations Bd. v. Pittsburgh S.S. Co.*, 340 U.S. 498 (1951).

[9] See *Daniel v. Family Security Life Ins. Co.*, 336 U.S. 220 (1949); *Sonzinsky v. U.S.*, 300 U.S. 506 (1937). Specifically, Rule 10 sets forth three categories which "indicate the character of the reasons the Court considers:"

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

[10] Sup. Ct. R. 10 (2000).

that he has been "wronged" by the "system." While Petitioner may have personal reasons for pursuing this litigation, he lacks a cognizable legal claim upon which to couch his grievances. To date, Petitioner has been defeated in each of the court battles he has waged. Not to be dissuaded by these defeats, Petitioner nevertheless remains committed to his "cause" and now petitions this Court in a final effort to achieve victory. However, when considered against the framework of Rule 10, the petition presents no basis for review.

2. Certiorari Should be Denied Because This Case Presents no Questions Which Have Relevance or Importance Beyond the Particular Facts and Parties Involved.

Certiorari should be denied because the issues raised by Simon turn solely upon an analysis of the particular facts involved herein and upon construction of particular contracts.

Specifically, Simon contends that certain claims for health benefits submitted by his assignor providers to ERISA employee benefit plans were improperly denied because of the limits on such benefits payable for treatment of psychiatric/mental/emotional disorders. Simon contends such limitations are invalid because the plans provided for the payment of higher benefits for the treatment of physical disorders. Simon also asserts federal antitrust and RICO violations premised upon his objection to the limitations on the amount of benefits payable under the Plans for mental health care, and the use of preferred provider networks. However, after distilling

the redundant and immaterial statements in the complaints, it is evident that Simon's action is merely an improperly joined "mass-collection" action against employee benefit plans and insurers for unpaid medical bills.

With respect to MetLife, Simon is attempting to assert claims for health benefits allegedly due under the Empire Plan.

The Empire Plan was established and is maintained by New York State for the benefit of its employees, and is therefore a "governmental plan" exempt from the ERISA, 29 U.S.C. §§ 1001-1461.[11] As such, contrary to Simon's contention, the Empire Plan is *not* an "ERISA plan" and MetLife's administration of that plan gives rise to no cognizable claim under the federal statutory scheme.[12] Further, the Empire Plan requires that payment for covered medical services be made only to enrollees or participating providers and expressly prohibits enrollees from assigning their right of payment to non-participating providers. Specifically, the Empire Plan does not permit assignment of benefits to a non-participating provider. As

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[11] *See* 29 U.S.C. § 1002(32) and 1003(b)(1).

[12] Petitioner classifies all the plans as ERISA plans and poses the following question: "(b) why did Judge Taylor quash Petitioner's service of process upon hundreds of ERISA plans without apparent regard to the ERISA statute or proper review of the ERISA plan documents and despite Petitioner's opposition(s)?" See Petition at p. 4.

a purported assignee of rights that do not exist under the Empire Plan, Simon lacks Standing.[13]

In addition, with respect to all claims at issue, the statute of limitations ran two years and 90 days after the end of the calendar year in which the claim(s) accrued.[14] All of Simon's alleged claims against MetLife are time-barred since the claims accrued as early as 1979 through March 1993.

Simon is improperly bringing the action as an assignee of an assignee. The original assignor of the claims for benefits consist of more than 638 individual patients who are participants and/or beneficiaries of named employee benefit plans. These claims for benefits were eventually assigned to Simon.

This case requires analysis of the evidence and discussions of specific facts relevant to each defendant. Moreover, it does not present issues beyond the parochial concerns of the petitioner. Accordingly, review should not be granted.

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[13] *Home Intensive Care, Inc. v. Metropolitan Life Ins. Co.*, N.Y.L.J. (July 30, 1993) at 23, col. 3 (Sup. Ct. N.Y. Co. 1993).

[14] *Rodriguez v. Nationwide Ins. Co.*, 97 A.D.2d 817, 468 N.Y.S.2d 693 (2d Dept. 1983) and N.Y. Ins. Law § 3221(a)(14) (1997).

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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